

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ELIZUR GONZAGA**

**Plaintiff,**

**v.**

**AMERICAN BANKERS INSURANCE  
COMPANY OF FLORIDA,**

**Defendant.**

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**CIVIL ACTION NO. 16-3481**

**AMERICAN BANKERS INSURANCE COMPANY  
OF FLORIDA'S NOTICE OF REMOVAL**

1. Defendant American Bankers Insurance Company of Florida ("ABIC") files this Notice of Removal against Plaintiff Elizur Gonzaga ("Plaintiff") as follows:

**I. COMMENCEMENT AND SERVICE**

2. This is the second lawsuit filed by Plaintiff in State court for the same claims. This suit was commenced on December 7, 2016, when Plaintiff filed his Original Petition in the 191st Judicial District Court for Dallas County, Texas, styled Cause No. DC-16-15653; *Elizur Gonzaga vs. American Bankers Insurance Company of Florida*.<sup>1</sup> ABIC was served through Corporation Service Company on December 12, 2016.<sup>2</sup>

3. This Notice of Removal is filed within thirty days of the receipt of process of a copy of the initial pleading, from which it was ascertained that the case is one which is removable, and is timely filed under 28 U.S.C. § 1446(b).<sup>3</sup> This Notice of Removal is also filed

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<sup>1</sup> See Exhibit B, Original Petition.

<sup>2</sup> See Exhibit A, Executed Process.

<sup>3</sup> See Exhibit A, Executed Process; *See Barrackman v. Banister*, CIV.A. H-06-3622, 2007 WL 189378, at \*2 (S.D. Tex. Jan. 22, 2007) ("the time for removal runs from the receipt [of notice of service] by the named defendant. after transmission from the statutory agent."); *Harmon v. Fleetwood Enterprises, Inc.*, SA-05-CA-636-RF, 2005 619820-v1/10977-387000\

within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(c).

## **II. GROUNDS FOR REMOVAL**

4. ABIC is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

## **III. DIVERSITY OF CITIZENSHIP**

5. This is an action with complete diversity of citizenship between Plaintiff and the joined Defendant.

6. Plaintiff is a resident of Dallas, with a last known address of domiciled at 13214 Deer Run Trail, Dallas, Dallas County, TX 75243, and is therefore a citizen of the state of Texas within the meaning and intent of 28 U.S.C. § 1332.<sup>4</sup>

7. ABIC is organized under the laws of Florida with its principal place of business in Miami, Florida. ABIC is therefore a citizen of the state of Florida within the meaning and intent of 28 U.S.C. § 1332.<sup>5</sup>

8. No change of citizenship has occurred since commencement of the state court action. Accordingly, diversity of citizenship exists among the proper parties.

## **IV. Amount in Controversy**

### **A. AVAILABLE FACTS PROVE THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.**

9. The Plaintiff has plead for damages in excess of \$200,000.<sup>6</sup>

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WL 3068567, at \*2 (W.D. Tex. Nov. 10, 2005) (acknowledging that service on a statutory agent is insufficient to trigger the removal period).

<sup>4</sup> See Exhibit B, Original Petition, at II, Parties and Service.

<sup>5</sup> See Exhibit G, detail by Entity Name from the Florida Department of State.

<sup>6</sup> See Exhibit B, Original Petition at IV.

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10. Accordingly, Plaintiff's Original Petition establishes that the total amount in controversy in the action exceeds the sum of \$75,000.00, and this Court has jurisdiction under 28 U.S.C. § 1332.

**V. VENUE**

11. Venue lies in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the state court action in this judicial district and division.

**VI. CONSENT TO REMOVAL**

12. No Consent to Removal is necessary as ABIC is the only named defendant in this lawsuit.

**VII. NOTICE**

13. Defendant will give notice of the filing of this notice of removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court, and will serve upon Plaintiff's counsel, a notice of the filing of this Notice of Removal.

**VIII. STATE COURT PLEADINGS**

14. Copies of all state court pleadings and orders are attached to this Notice of Removal.

**IX. EXHIBITS TO NOTICE OF REMOVAL**

15. Pursuant to Rule 81 of the Local Civil Rules for the Northern District of Texas, the following documents are attached to this Notice as corresponding numbered exhibits:

- A. All executed process in the case;
- B. Plaintiff's Original Petition;
- C. Docket sheet;

- D. An index of matters being filed;
  - E. A list of all counsel of record, including addresses, telephone numbers and parties represented;
  - F. Civil Cover Sheet;
  - G. Detail by Entity Name from the Florida Department of State;
  - H. Certificate of Interested Parties.
16. There are no orders signed by the state court judge.

### **X. CONCLUSION**

WHEREFORE, Defendant, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the County Court at Law No. 1 for Harris County, Texas to this Court.

Respectfully submitted,

/s/ April F. Robbins

April F. Robbins

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**ATTORNEY FOR DEFENDANT  
AMERICAN BANKERS INSURANCE  
COMPANY OF FLORIDA**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on December 22, 2016, on the following counsel of record by e-service:

Andrew J. Wooley  
The Law Office of Andrew J. Wooley  
10440 N. Central Expressway, Suite 800  
Dallas, TX 75231

E-Service: [awooley@wooleylaw.com](mailto:awooley@wooleylaw.com)

/s/ April F. Robbins  
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April F. Robbins